

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF THE
CWABS INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-21, a national
bank.

Case No. 2:17-cv-01969-RFB-BNW

ORDER

Plaintiff.

v.

VILLAGIO COMMUNITY ASSOCIATION, a Nevada non-profit corporation; RMB INVESTMENTS, LLC, a Nevada limited liability company.

Defendants

1. INTRODUCTION

18 Before the Court is The Bank of New York Mellon's motion for default judgment against
19 RMB Investments, LLC. ECF No. 36.

II. PROCEDURAL BACKGROUND

22 Bank of New York sued RMB and Villagio Community Association in July 2017. ECF
23 No. 1. The bank asserts a claim for declaratory relief to quiet title to a Las Vegas property. Id.
24 RMB was served on July 31, 2017. ECF No. 7. After RMB failed to answer the complaint, the
25 Clerk of the Court entered default against RMB on August 30, 2017. ECF No. 12. Villagio was
26 then dismissed from this matter by stipulation. ECF No. 27. Shortly thereafter, the Court stayed
27 this matter pending the Nevada Supreme Court’s decision in SFR Investments Pool 1, LLC v.
28 Bank of New York Mellon, 422 P.3d 1248 (Nev. 2018). ECF No. 28. The stay was lifted on

1 September 17, 2018. ECF No. 31. Bank of New York now moves for default judgment against
2 RMB. ECF No. 36. RMB has never appeared to defend itself in this matter. See docket.

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4 III. ALLEGED FACTS

5 In its complaint, Bank of New York alleges the following:

6 Raleigh Wendell Copeland purchased the property located at 1881 W. Alexander Road
7 Unit 2142, North Las Vegas, Nevada 89032 in October 2006 by obtaining a loan. The loan was
8 secured by a deed of trust owned by Bank of New York Mellon.

9 After Copeland failed to timely pay the homeowners' association fees associated with the
10 property, Villagio foreclosed on the property under NRS Chapter 116 as a result. But Bank of
11 New York Mellon, through its servicing agent, tendered the superpriority portion of Villagio's
12 lien. At the subsequent foreclosure sale, Villagio purchased the property. Villagio later
13 quitclaimed its interests to RMB.

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15 IV. LEGAL STANDARD

16 The granting of a default judgment is a two-step process directed by Federal Rule of Civil
17 Procedure ("Rule") 55. Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). The first step is an
18 entry of clerk's default based on a showing, by affidavit or otherwise, that the party against whom
19 the judgment is sought "has failed to plead or otherwise defend." Fed. R. Civ. P. 55(a). The
20 second step is default judgment under Rule 55(b), a decision which lies within the discretion of
21 the Court. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980).

22 Factors which a court, in its discretion, may consider in deciding whether to grant
23 a default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of the
24 substantive claims, (3) the sufficiency of the complaint, (4) the amount of money at stake, (5) the
25 possibility of a dispute of material fact, (6) whether the default was due to excusable neglect, and
26 (7) the Federal Rules' strong policy in favor of deciding cases on the merits. Eitel, 782 F.2d at
27 1471–72.

28 If an entry of default is made, the Court accepts all well-pleaded factual allegations in the

1 complaint as true; however, conclusions of law and allegations of fact that are not well-pleaded
2 will not be deemed admitted by the defaulted party. DirecTV, Inc. v. Hoa Huynh, 503 F.3d 847,
3 854 (9th Cir. 2007). Additionally, the Court does not accept factual allegations relating to the
4 amount of damages as true. Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir. 1977).
5 Default establishes a party's liability, but not the amount of damages claimed in the pleading. Id.

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7 **V. DISCUSSION**

8 In considering the seven Eitel factors, the Court finds default judgment against RMB is
9 warranted. The first and sixth factors favor granting default judgment because RMB has failed to
10 defend—or appear at all in this matter—for the last two years. Its failure to appear prejudices the
11 bank by preventing the bank from determining its rights to the property. Its failure to appear for
12 *nearly two years*, a substantial period of time, also demonstrates the lack of excusable neglect.
13 And while the seventh factor generally counsels against the granting of default judgment, RMB's
14 failure to appear prevents the Court from determining the matter on its merits.

15 The second and third factors also favor a grant of default judgment. The claims rely on
16 recorded documents and allegations that sufficiently allege a nonjudicial foreclosure sale occurred
17 on a subpriority lien only; the bank's servicing agent tendered the superpriority portion of
18 Villagio's lien prior to the foreclosure sale, leaving only a subpriority lien on which Villagio could
19 foreclose. Thus, when accepting the factual allegations as true, RMB acquired the property subject
20 to the bank's interest.

21 Finally, there is no money at stake to counsel against the grant of default judgment; the
22 bank seeks only declaratory relief against RMB. Thus, the Court finds the Eitel factors favor the
23 grant of default judgment against RMB and grants the motion for default judgment accordingly.

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1 **VI. CONCLUSION**

2 **IT IS ORDERED** that The Bank of New York Mellon's motion for default judgment (ECF
3 No. 36) is GRANTED. The Clerk of the Court is instructed to enter judgment on claim one against
4 RMB and in favor of The Bank of New York Mellon. The Court declares that RMB acquired the
5 property subject to The Bank of New York Mellon's deed of trust.

6 **IT IS FURTHER ORDERED** that the Clerk of the Court is also instructed to close this
7 matter accordingly.

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9 DATED: July 29, 2019.



10 **RICHARD F. BOULWARE, II**
11 **UNITED STATES DISTRICT JUDGE**

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